

State of Arizona  
Senate  
Forty-seventh Legislature  
First Regular Session  
2005

CHAPTER 257

## **SENATE BILL 1318**

AN ACT

AMENDING SECTIONS 48-2607 AND 48-2609, ARIZONA REVISED STATUTES; AMENDING TITLE 48, CHAPTER 18, ARTICLE 10, ARIZONA REVISED STATUTES, BY ADDING SECTION 48-2816; AMENDING SECTIONS 48-3601, 48-3603, 48-3609, 48-3613, 48-3614 AND 48-3615, ARIZONA REVISED STATUTES; PROVIDING FOR DELAYED REPEAL OF SECTION 48-2816, ARIZONA REVISED STATUTES, AS ADDED BY THIS ACT; RELATING TO FLOOD DISTRICTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 48-2607, Arizona Revised Statutes, is amended to  
3 read:

4 48-2607. District divisions; number of directors; exception

5 A. When the boundaries of the proposed district are defined and  
6 established, the board of supervisors shall make an order dividing the  
7 district into three or five divisions as nearly equal in size as practicable,  
8 which shall be numbered consecutively. One director, who shall be an elector  
9 and a resident freeholder of the division, shall be elected as provided in  
10 this article by each division.

11 B. When requested in the petition, three directors, who shall be  
12 resident electors and freeholders of the district, shall be elected at large  
13 by the qualified electors of the district.

14 C. THIS SECTION DOES NOT APPLY IN THE CASE OF THE DIVISION OF A FLOOD  
15 PROTECTION DISTRICT AS PROVIDED BY SECTION 48-2816.

16 Sec. 2. Section 48-2609, Arizona Revised Statutes, is amended to read:

17 48-2609. Qualifications of electors; exception

18 ~~No A person shall be~~ IS NOT entitled to vote at any election held under  
19 ~~the provisions of this chapter unless he possesses~~ THE PERSON HAS all the  
20 qualifications required of electors for state officers under the general  
21 election laws, and is the owner of real property located within the  
22 boundaries of the district on which ~~he has paid~~ taxes HAVE BEEN PAID as shown  
23 by the county tax roll next preceding the date of the election. THIS SECTION  
24 DOES NOT APPLY IN THE CASE OF A FLOOD PROTECTION DISTRICT AS PROVIDED BY  
25 SECTION 48-2816.

26 Sec. 3. Title 48, chapter 18, article 10, Arizona Revised Statutes, is  
27 amended by adding section 48-2816, to read:

28 48-2816. Flood protection district divisions; directors;  
29 qualification of electors

30 A. THE BOARD OF SUPERVISORS SHALL ORDER THE DISTRICT TO BE DIVIDED  
31 INTO THREE OR FIVE DIVISIONS, NUMBERED CONSECUTIVELY AND AS NEARLY EQUAL IN  
32 SIZE AS PRACTICABLE.

33 B. ONE DIRECTOR, WHO SHALL BE AN ELECTOR AND A RESIDENT LANDOWNER, OR  
34 A QUALIFIED ELECTOR, IN EACH DIVISION SHALL BE ELECTED FOR THE DIVISION AS  
35 PROVIDED IN THIS ARTICLE. IN ADDITION, IF REQUESTED IN THE PETITION FOR  
36 ORGANIZING THE DISTRICT, THREE DIRECTORS, WHO SHALL BE RESIDENT ELECTORS AND  
37 LANDOWNERS IN THE DISTRICT, SHALL BE ELECTED AT LARGE BY THE QUALIFIED  
38 ELECTORS OF THE DISTRICT.

39 C. TO BE ELIGIBLE TO VOTE IN A DISTRICT ELECTION, A PERSON MUST  
40 QUALIFY UNDER SECTION 48-2609, EXCEPT AS OTHERWISE PROVIDED BY THIS SECTION  
41 AND SUBJECT TO THE FOLLOWING:

42 1. FOR THE PURPOSE OF ORGANIZING A NEW FLOOD PROTECTION DISTRICT, THE  
43 QUALIFICATIONS OF ELECTORS ARE THE SAME AS PROVIDED BY THIS CHAPTER FOR THE  
44 ORGANIZATION OF DRAINAGE DISTRICTS.

1           2. THE ADMINISTRATOR OR EXECUTOR OF THE ESTATE OF A DECEASED PERSON,  
2 AND THE GUARDIAN OF A MINOR OR INCOMPETENT PERSON WHO IS APPOINTED AND  
3 QUALIFIED UNDER THE LAWS OF THIS STATE, MAY REGISTER AND CAST THE VOTE OF THE  
4 ESTATE OR PERSON REPRESENTED BY THE ADMINISTRATOR OR EXECUTOR.

5           3. THE OFFICER OR AGENT OF A CORPORATION IN WHOSE NAME TITLE TO  
6 PROPERTY IN THE DISTRICT ON WHICH IT HAS PAID TAXES AS SHOWN ON THE MOST  
7 RECENT TAX ROLL AND WHO IS DESIGNATED AND AUTHORIZED BY A RESOLUTION OF THE  
8 CORPORATE BOARD OF DIRECTORS IS A QUALIFIED ELECTOR AND MAY REGISTER AND CAST  
9 THE VOTE OF THE CORPORATION.

10          4. THE GENERAL PARTNER OF A PARTNERSHIP IN WHOSE NAME TITLE TO  
11 PROPERTY IN THE DISTRICT ON WHICH IT HAS PAID TAXES AS SHOWN ON THE MOST  
12 RECENT TAX ROLL AND WHO IS DESIGNATED AND AUTHORIZED IN WRITING BY ALL OF THE  
13 GENERAL PARTNERS IS A QUALIFIED ELECTOR AND MAY REGISTER AND CAST THE VOTE OF  
14 THE PARTNERSHIP.

15          5. THE TRUSTEE OF A TRUST, OR IF THERE IS MORE THAN ONE TRUSTEE, A  
16 TRUSTEE WHO IS DESIGNATED AND AUTHORIZED IN WRITING BY ALL OF THE TRUSTEES,  
17 IN WHOSE NAME TITLE TO PROPERTY IN THE DISTRICT ON WHICH IT HAS PAID TAXES AS  
18 SHOWN ON THE MOST RECENT TAX ROLL IS A QUALIFIED ELECTOR AND MAY REGISTER AND  
19 CAST THE VOTE OF THE TRUST.

20          Sec. 4. Section 48-3601, Arizona Revised Statutes, is amended to read:

21          48-3601. Definitions

22          In this article, unless the context otherwise requires:

23          1. "Area of jurisdiction" means the incorporated and unincorporated  
24 areas of the county, including public lands, excluding those incorporated  
25 areas of cities or towns which have elected to assume floodplain management  
26 powers and duties pursuant to section 48-3610.

27          2. "Board" means the board of directors of a flood control district  
28 organized under this article.

29          3. "DEVELOPMENT" MEANS ANY MAN-MADE CHANGE TO IMPROVED OR UNIMPROVED  
30 REAL ESTATE, INCLUDING BUILDINGS OR OTHER STRUCTURES, MINING, DREDGING,  
31 FILLING, GRADING, PAVING, EXCAVATION OR DRILLING OPERATIONS OR STORAGE OF  
32 EQUIPMENT OR MATERIALS.

33          ~~3.~~ 4. "District" means a flood control district organized pursuant to  
34 this article.

35          ~~4.~~ 5. "Flood" or "floodwaters" means a temporary rise in water level  
36 including groundwater or overflow of water onto lands not normally covered by  
37 water.

38          ~~5.~~ 6. "Floodplain" means the ANY areas adjoining the channel of IN a  
39 watercourse including areas where drainage is or may be restricted by  
40 man-made structures which have been or may be covered partially or wholly by  
41 floodwater from the one hundred-year flood.

42          ~~6.~~ 7. "Floodplain regulations" means the codes, ordinances and other  
43 regulations adopted pursuant to this article relating to the use of land and  
44 construction within the floodway and floodplain areas.

7. 8. "Floodway" means the ~~channel~~ AREA of a river or other watercourse and the adjacent land areas necessary in order to discharge the one hundred-year flood without cumulatively increasing the water surface elevation more than one foot.

8- 9. "One hundred-year flood" or "base flood" means a flood that has a one per cent chance of being equalled or exceeded in a one year period, based on the criteria established by the director of water resources.

9. 10. "Person" means an individual or his THE INDIVIDUAL'S agent, A firm, partnership, association or corporation, or AN agent of the aforementioned groups, or this state or its agencies or political subdivisions.

10- 11. "Regulatory flood elevation" means the elevation which is one foot above the base flood elevation for a watercourse for which the base flood elevation has been determined and shall be as determined by the criteria developed by the director of water resources for all other watercourses.

~~11-~~ 12. "Watercourse" means a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Sec. 5. Section 48-3603, Arizona Revised Statutes, is amended to read:

48-3603. Powers, duties and immunities of district and board;

## exemptions

A. A county flood control district organized under this article is a political taxing subdivision of this state and has all the powers, privileges and immunities granted generally to municipal corporations by the constitution and laws of this state including immunity of its property and bonds from taxation.

B. The board of directors shall exercise all powers and duties in the acquisition and operation of the properties of the district and in carrying out its regulatory functions under this article as are ordinarily exercised by the governing body of a municipal corporation.

C. A district organized under this article, acting through its board of directors, may:

1. Acquire by eminent domain, purchase, donation, dedication, exchange or other lawful means rights-of-way for and construct, operate and maintain flood control works and storm drainage facilities within or without the district for the benefit of the district.

2. Acquire by eminent domain, purchase, donation, dedication, exchange or other lawful means and dispose of by sale, exchange or other lawful means real and personal property within the boundaries of the district.

1           3. Contract and join with this state, the United States or any other  
2 flood control district or floodplain board, municipality, political  
3 subdivision, governmental agency, irrigation or agricultural improvement  
4 district, association, corporation or individual in acquiring, constructing,  
5 maintaining and operating flood control works, and regulating floodplains.

6           4. Enter into contracts of indemnity to indemnify this state, the  
7 United States or any other flood control district, municipality, political  
8 subdivision, governmental agency, irrigation or agricultural improvement  
9 district, association, corporation or individual against liability by virtue  
10 of injuries, losses or damages occurring through the use of their facilities,  
11 structures, streets, rights-of-way or properties in connection with the  
12 operation of a flood control district and the regulation of floodplains.

13           5. Acquire and maintain existing flood control and drainage facilities  
14 within the district for the benefit of the district if mutually agreeable to  
15 the owners of such facilities.

16           6. Acquire, convert and maintain surplus irrigation facilities as  
17 storm drainage facilities if mutually agreeable to owners of such facilities.

18           7. Construct, maintain and operate flood control and storm drainage  
19 facilities and regulate floodplains in the district by agreement with this  
20 state, counties, other municipal corporations, political subdivisions and  
21 other persons and reimburse such agencies or persons for the cost of the  
22 work.

23           8. On the dissolution of any other flood control district, assume the  
24 assets and obligations of the other district.

25           9. Enter into intergovernmental agreements with other public agencies  
26 pursuant to title 11, chapter 7, article 3 to carry out the objects and  
27 purposes of the district.

28           10. Apply for, obtain, expend and repay flood control loans pursuant to  
29 title 45, chapter 8, article 5.

30           11. Apply to the director of water resources for alternative flood  
31 control assistance for flood control projects pursuant to section 45-1471,  
32 except that the director shall not grant any such assistance for any project  
33 unless he THE DIRECTOR has approved the project in advance of planning.

34           12. Sue and be sued, enter into contracts and generally do all things  
35 which may be necessary to construct, acquire and maintain facilities, operate  
36 the district and perform its regulatory functions and which are in the  
37 interests of the district.

38           13. Adopt such rules and bylaws for its orderly operation as it sees  
39 fit.

40           14. Appoint a chief engineer and general manager, who may be the county  
41 engineer.

42           15. Appoint a treasurer, who may be the county treasurer, an attorney,  
43 who may be the county attorney, and other employees it considers desirable  
44 and necessary to carry out the purposes of the district. Any other work  
45 required by the district may be performed by regular employees of the county

1 on assignment by the board of supervisors, except that regular county  
2 employees shall not undertake construction projects with an estimated cost of  
3 five thousand dollars or more.

4 16. Allow variances from the terms or regulations adopted pursuant to  
5 this article to the extent permitted by section 48-3609, subsection B,  
6 paragraph 7 and if, owing to peculiar conditions, a strict interpretation  
7 would work an unnecessary hardship, if in granting the variance the general  
8 intent and purposes of this article and the regulations will be preserved.

9 17. Construct, operate and maintain artificial groundwater recharge  
10 facilities, and, if organized in a county having a population of more than  
11 five hundred thousand persons according to the most recent United States  
12 decennial census, underground storage and recovery facilities, if they have  
13 flood control benefits, and contract and join with the United States, this  
14 state and other governmental units for the purpose of constructing, operating  
15 and maintaining multipurpose groundwater recharge, underground storage and  
16 recovery and flood control facilities, except that a district shall not  
17 expend district funds for any underground storage and recovery facility that  
18 does not have flood control benefits.

19 18. Acquire real property by purchase, donation, dedication, exchange  
20 or other lawful means, except by eminent domain, in areas suitable for  
21 groundwater recharge projects.

22 19. Cooperate and join with other entities that engage in underground  
23 water storage and recovery projects under title 45, chapter 3, including  
24 multi-county water conservation districts and other political subdivisions.

25 20. EITHER ALONE, OR BY ENTERING INTO ANY COMBINATION OF CONTRACTS WITH  
26 THIS STATE, THE UNITED STATES, ANY OTHER FLOOD CONTROL DISTRICT, A FLOODPLAIN  
27 BOARD, A MUNICIPALITY OR OTHER POLITICAL SUBDIVISION, A GOVERNMENT AGENCY, AN  
28 IRRIGATION OR AGRICULTURAL IMPROVEMENT DISTRICT OR AN ASSOCIATION,  
29 CORPORATION OR INDIVIDUAL, IMPLEMENT FLOOD CONTROL ENHANCEMENT SOLUTIONS  
30 INCLUDING:

31 (a) ASSISTANCE FOR PROPERTY OWNERS WITHIN THE FLOODPLAIN AND THROUGH  
32 THE ELEVATION, BANK STABILIZATION AND FLOOD PROOFING OF EXISTING STRUCTURES.

33 (b) PRESERVATION AND RESTORATION OF THE FLOODPLAIN.

34 (c) MAINTENANCE OF FLOOD WARNING SYSTEMS AND ASSOCIATED FLOOD RESPONSE  
35 PLANS.

36 D. The board shall adopt and enforce floodplain regulations as  
37 provided in section 48-3609.

38 E. The board may adopt a fee schedule for review of applications for  
39 permits and variances from or interpretations of the floodplain regulations.

40 F. The affirmative vote of a majority of the board of directors is  
41 necessary to approve any measure. One member may adjourn any meeting at  
42 which a quorum is not present.

43 G. The board shall keep a proper written record of all of its  
44 proceedings, which shall be open to public inspection.

1 H. The accounts of the district are subject to annual and other audits  
2 as provided by law.

3 I. ~~The provisions of~~ Section 9-403 ~~do~~ DOES not apply to a flood  
4 control district organized under this article and ~~the provisions of~~ section  
5 9-402 ~~do~~ DOES not apply when the district is selling property to a political  
6 subdivision. If any property sold by the district to a political subdivision  
7 without complying with section 9-402 is subsequently sold by the political  
8 subdivision as undeveloped property for a price exceeding the original sale  
9 price, the district shall be paid the difference between the original price  
10 and the subsequent sale price. For the purposes of this subsection,  
11 "political subdivision" means any incorporated city or town, school district,  
12 charter school, community college or university.

13 Sec. 6. Section 48-3609, Arizona Revised Statutes, is amended to read:

14 48-3609. Floodplain delineation; regulation of use; federal  
15 requirements and definitions

16 A. Except as provided in section 48-3610, the board within its area of  
17 jurisdiction shall delineate or may by rule require developers of land to  
18 delineate for areas where development is ongoing or imminent, and thereafter  
19 as development becomes imminent, floodplains consistent with the criteria  
20 developed by the director of water resources.

21 B. Except as provided in section 48-3610, the board shall adopt and  
22 enforce regulations governing floodplains and floodplain management in its  
23 area of jurisdiction which shall include the following:

24 1. Regulations for all development of land, construction of  
25 residential, commercial or industrial structures or uses of any kind which  
26 may divert, retard or obstruct floodwater and threaten public health or  
27 safety or the general welfare.

28 2. Regulations which establish minimum flood protection elevations and  
29 flood damage prevention requirements for uses, structures and facilities  
30 which are vulnerable to flood damage. Regulations adopted under this section  
31 shall comply with state and local land use plans and ordinances, if any.

32 3. Regulations which provide for coordination by the district with all  
33 other interested and affected political subdivisions and state agencies.

34 4. Regulations that require any residential structure built in a  
35 floodplain to be constructed so as to place the lowest floor elevation of the  
36 structure at or above the regulatory flood elevation, that require commercial  
37 or industrial structures to be flood proofed or elevated to or above the  
38 regulatory flood elevation and that prohibit any activity in a designated  
39 floodway, including fill, that would increase the water surface elevation  
40 during a base flood.

41 5. Regulations to allow a mobile home located in a floodplain on  
42 August 3, 1984 to be replaced by another mobile home if:

43 (a) The mobile home to be replaced was not damaged by a flood to more  
44 than fifty per cent of its value before the flood.

1 (b) The replacement mobile home is elevated so that the bottom of the  
2 structural frame or the lowest point of any attached appliances, whichever is  
3 lower, is at or above the regulatory flood elevation.

4 6. Regulations that require all new placement of mobile homes to be  
5 anchored to prevent flotation, collapse or movement.

6 7. Variance procedures to permit variances from the regulations that  
7 do not result in danger or damage to persons or property in floodplains in  
8 the area of jurisdiction. Variances may be granted only if special  
9 circumstances, such as size, shape, topography, location or surroundings of  
10 the property, would cause the strict application of the regulations to  
11 deprive the property of privileges enjoyed by similar property in the  
12 floodplain. A variance is subject to conditions to ensure that the variance  
13 does not constitute a grant of special privileges inconsistent with the  
14 limitations on similar property in the floodplain.

15 C. Waste disposal systems shall not be installed wholly or partially  
16 in a regulatory floodway.

17 D. Water supply, water treatment and sewage collection and disposal  
18 systems built in a regulatory floodplain shall be designed to prevent or  
19 minimize floodwater infiltrating the systems and to prevent or minimize  
20 floodwater contamination during the base flood.

21 E. Floodplain regulations enacted pursuant to this article may only be  
22 adopted after a public hearing at which parties in interest and other  
23 citizens have an opportunity to be heard. At least thirty days before the  
24 hearing, a notice of the time and place of the hearing shall be published in  
25 a newspaper of general circulation within the county or, if no newspaper of  
26 general circulation is regularly published, in a newspaper of general  
27 circulation nearest the area of jurisdiction. A notice of any hearing  
28 accompanied by a copy of each of the proposed regulations shall be furnished  
29 to the director at least thirty days before the date of the hearing. A copy  
30 of any regulation adopted by a district pursuant to this article shall within  
31 five days thereafter be filed with the director and with each political  
32 subdivision and municipal corporation in the area of jurisdiction.

33 F. All development of land, construction of residential, commercial or  
34 industrial structures or future development within delineated floodplain  
35 areas is prohibited unless floodplain regulations have been adopted pursuant  
36 to this article for such floodplain area and are in full force and effect.

37 G. Before adopting regulations the board may issue a special permit  
38 authorizing construction or development if the board finds that construction  
39 or development is not a danger to persons or property.

40 H. Unless expressly provided, this article and any regulations adopted  
41 pursuant to this article do not affect:



1           1. Existing legal uses of property or the right to continuation of  
2 such legal use. However, if a nonconforming use of land or a building or  
3 structure is discontinued for twelve months or destroyed to the extent of  
4 fifty per cent of its value, as determined by a competent appraiser, any  
5 further use shall comply with this article and regulations of the district.

6           2. Reasonable repair or alteration of property for the purposes for  
7 which the property was legally used on August 3, 1984 or on the date any  
8 regulations affecting such property take effect, except that any alteration,  
9 addition or repair to a nonconforming building or structure which would  
10 result in increasing its flood damage potential by fifty per cent or more  
11 shall be either flood proofed or elevated to or above the regulatory flood  
12 elevation.

13           3. Reasonable repair of structures constructed with the written  
14 authorization required by section 48-3613.

15           4. Facilities constructed or installed pursuant to a certificate of  
16 environmental compatibility issued pursuant to title 40, chapter 2, article  
17 6.2.

18           1. Within one hundred twenty days after completion of construction of  
19 any flood control protective works which changes the rate of flow during the  
20 flood or the configuration of the floodplain upstream or downstream from or  
21 adjacent to the project, the person or agency responsible for installation of  
22 the project shall provide to the governing bodies of all jurisdictions  
23 affected by the project a new delineation of all floodplains affected by the  
24 project. The new delineation shall be done according to the criteria adopted  
25 by the director of water resources.

26           J. A flood control district or appropriate public agency which has  
27 failed to adopt or enforce floodplain regulations required by this section  
28 shall not be eligible for disaster relief identified by section 35-192,  
29 subsection D, paragraphs 3 and 5. The director of water resources shall  
30 advise the director of the division of emergency management within the  
31 department of emergency and military affairs of such failure to comply.

32           K. A DISTRICT AND ITS AGENTS MAY HAVE REASONABLE ACCESS AS PROVIDED BY  
33 WRITTEN AUTHORIZATION ISSUED PURSUANT TO SECTION 48-3613 OR IF NO  
34 AUTHORIZATION HAS BEEN ISSUED DURING BUSINESS HOURS OR IN THE CASE OF AN  
35 EMERGENCY, AT ANY TIME, TO ENTER AND INSPECT ANY DEVELOPMENT ON REAL PROPERTY  
36 THAT IS LOCATED IN A FLOODPLAIN IN ORDER TO DETERMINE WHETHER AN OWNER IS IN  
37 VIOLATION OF THIS CHAPTER. THIS SUBSECTION DOES NOT AUTHORIZE THE INSPECTION  
38 OF ANY RECORDS OR FILES ON A SITE OR THE INTERIOR OF ANY BUILDING. A  
39 DISTRICT SHALL ATTEMPT TO PROVIDE WRITTEN NOTICE TO THE OWNER AT LEAST  
40 FORTY-EIGHT HOURS IN ADVANCE THAT THE REAL PROPERTY IS TO BE INSPECTED AND  
41 THAT THE OWNER OR THE OWNER'S AGENT MAY ACCOMPANY THE DISTRICT INSPECTOR ON  
42 THE INSPECTION. A DISTRICT INSPECTOR SHALL COMPLY WITH ANY SAFETY  
43 REQUIREMENTS THAT MAY BE APPLICABLE TO A PARTICULAR SITE. THE DISTRICT SHALL  
44 PREPARE A REPORT OF ANY INSPECTIONS MADE PURSUANT TO THIS SUBSECTION. THE

1 REPORT SHALL BE MADE AVAILABLE IN THE RECORDS OF THE DISTRICT AND A COPY SENT  
2 TO THE OWNER WITHIN THIRTY DAYS AFTER THE INSPECTION.

3 L. THE FLOODPLAIN REGULATIONS ADOPTED BY A DISTRICT PURSUANT TO THIS  
4 CHAPTER ARE INTENDED TO CARRY OUT THE REQUIREMENTS OF THE NATIONAL FLOOD  
5 INSURANCE PROGRAM AND ANY TERM NOT OTHERWISE DEFINED IN THIS CHAPTER SHALL  
6 HAVE THE MEANING SET FORTH IN 44 CODE OF FEDERAL REGULATIONS PARTS 59 THROUGH  
7 78, AS EFFECTIVE ON JANUARY 1, 2005.

8 Sec. 7. Section 48-3613, Arizona Revised Statutes, is amended to read:

9 48-3613. Authorization required for development in  
10 watercourses; exceptions; enforcement

11 A. Except as provided in section 48-3625 and in this section, a person  
12 shall not ~~construct any structure~~ ENGAGE IN ANY DEVELOPMENT which will  
13 divert, retard or obstruct the flow of waters in any watercourse without  
14 securing written authorization from the board of the district in which the  
15 watercourse is located. Where the watercourse is a delineated floodplain,  
16 ~~no structure shall be constructed~~ DEVELOPMENT SHALL TAKE PLACE in the  
17 floodplain without written authorization from the board of the district in  
18 which the floodplain is located.

19 B. Written authorization is not required FOR nor shall the board  
20 prohibit:

21 1. The construction of bridges, culverts, dikes and other structures  
22 necessary for the construction of public highways, roads and streets  
23 intersecting or crossing a watercourse.

24 2. The construction of storage dams for watering livestock or wildlife  
25 and structures on banks of a watercourse to prevent erosion of or damage to  
26 adjoining land if the structure will not divert, retard or obstruct the  
27 natural channel of the watercourse or dams for the conservation of  
28 floodwaters as permitted by title 45, chapter 6.

29 3. Construction of tailing dams and waste disposal areas used in  
30 connection with mining and metallurgical operations. This paragraph does not  
31 exempt those sand and gravel operations which will divert, retard or obstruct  
32 the flow of waters in a watercourse from complying with and acquiring  
33 authorization from the board pursuant to regulations adopted by the board  
34 under this article.

35 4. Other construction if it is determined by the board that written  
36 authorization is unnecessary.

37 5. Any flood control district, county, city, town or other political  
38 subdivision from exercising powers granted to it under this article.

39 6. The construction of streams, waterways, lakes and other auxiliary  
40 facilities in conjunction with development of public parks and recreation  
41 facilities by a public agency or political subdivision.

42 7. The construction and erection of poles, towers, foundations,  
43 support structures, guy wires, and other facilities related to power  
44 transmission as constructed by any utility whether a public service  
45 corporation or a political subdivision.

1 C. Before any construction authorized by subsection B of this section  
2 may begin, the person must submit plans for the construction to the board for  
3 review and comment.

4 D. In addition to other penalties or remedies otherwise provided by  
5 law, this state, a political subdivision or a person who may be damaged or  
6 has been damaged as a result of the unauthorized diversion, retardation or  
7 obstruction of a watercourse has the right to commence, maintain and  
8 prosecute any appropriate action or pursue any remedy to enjoin, abate or  
9 otherwise prevent any person from violating or continuing to violate this  
10 section or regulations adopted pursuant to this article. If a person is  
11 found to be in violation of this section, the court shall require the  
12 violator to either comply with this section if authorized by the board or  
13 remove the obstruction and restore the watercourse to its original  
14 state. The court may also award such monetary damages as are appropriate to  
15 the injured parties resulting from the violation, including reasonable costs  
16 and attorney fees.

17 Sec. 8. Section 48-3614, Arizona Revised Statutes, is amended to read:

18 48-3614. Declaration of public nuisance; abatement

19 ~~Every new structure, building, fill, excavation or~~ ALL development  
20 located or maintained in a floodplain since August 8, 1973 in violation of  
21 this article or of floodplain regulations established by the board and  
22 without written authorization from the board is a public nuisance per se and  
23 may be abated, prevented or restrained by action of this state or any of its  
24 political subdivisions.

25 Sec. 9. Section 48-3615, Arizona Revised Statutes, is amended to read:

26 48-3615. Violation; classification

27 A. It is unlawful for a person TO ENGAGE IN ANY DEVELOPMENT OR to  
28 divert, retard or obstruct the flow of waters in a watercourse if it creates  
29 a hazard to life or property without securing the written authorization  
30 required by section 48-3613. Where the watercourse is a delineated  
31 floodplain, ~~it is unlawful to excavate or build any structure~~ ENGAGE IN ANY  
32 DEVELOPMENT affecting the flow of waters without securing written  
33 authorization required by section 48-3613.

34 B. A person who violates this section is guilty of a class 2  
35 misdemeanor.

36 Sec. 10. Delayed repeal; savings

37 A. Section 48-2816, Arizona Revised Statutes, as added by this act, is  
38 repealed from and after December 31, 2015.

39 B. The repeal of section 48-2816, Arizona Revised Statutes, as  
40 provided by this section, does not affect the terms of office of incumbent  
41 members of the board of directors of any flood protection district. Members  
42 elected pursuant to section 48-2816, Arizona Revised Statutes, as added by  
43 this act, and serving on December 31, 2015 may continue to serve for the  
44 remainder of their terms of office.

APPROVED BY THE GOVERNOR MAY 10, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 4, 2005.

*Norman L. Joyce*  
Chief Clerk of the House

Chairman Ballenger  
Secretary of the Senate

**Secretary to the Governor**

**Governor of Arizona**

**Secretary of State**

**S.B. 1318**

SENATE CONCURS IN HOUSE AMENDMENTS  
AND FINAL PASSAGE

Passed the Senate April 28, 2005,

by the following vote: 26 Ayes,

4 Nays, 0 Not Voting

Ken Blumett

President of the Senate

Charmian Biddington

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

28th day of April, 2005

at 4:00 o'clock P. M.

Wendee Hanna

Secretary to the Governor

Approved this 4 day of

May, 2005,

at 2:55 o'clock P. M.

Jon R. Noriega

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 4 day of May, 2005,

at 4:19 o'clock P. M.

Janice K. Brewer

Secretary of State

S.B. 1318